IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WP(C).No. 30245 of 2006(A)

PETITIONER:

P.V. VARGHESE, S/O.VARKEY,
AGED 53 YEARS, PUTHAYATHU HOUSE, ADIMALY P.O.,
MANNAMKANDAM VILLAGE, DEVIKULAM TALUK,
IDUKKI DISTRICT, NOW RESIDING ATPUTHAYATHU HOUSE,
THAIKATTUKARA P.O., MUTTAM, ALUVA-6.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:

1. THE SUPERINTENDING ENGINEER,
NH (R) (C) CIRCLE, VYTTILA, ERNAKULAM.

2. THE EXECUTIVE ENGINEER,
NH (R) DICIVISION, OFFICE OF THE EXECUTIVE
ENGINEER, NH (R) DIVISION, MUVATTUPUZHA.

3. THE ASSISTANT EXECUTIVE ENGINEER,
NH (R) SUB DIVISION, OFFICE OF THE
ASSISTANT EXECUTIVE ENGINEER,
KOTHAMANGALAM.

4. SMT.C.P. PATHUMMA, ASSISTANT EXECUTIVE
ENGINEER, NH (R) SUB DIVISION, OFFICE OF
THE ASSISTANT EXECUTIVE ENGINEER,
KOTHAMANGALAM.

5. THE ASSISTANT ENGINEER, NH (R),
NH SECTION NO.III, ADIMALY P.O.,
IDUKKI DISTRICT.

Addl.R 6. P.T.THOMAS, AGED 47 YEARS,
S/O THOMAS
RESIDING AT PADINJAREMURI HOUSE
ADIMALIKARA MANNAMKANDAM VILLAGE, IDUKKI DISTRICT.
(Addl.R6 impleaded as per order in I.A.No.16909 of 2006 dated 6-12-2006)

BY ADV. SMT.KOCHUMOL KODUVATH (Addl.R6)
GOVERNMENT PLEADER ADV. SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C)NO.30245 OF 2006

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Dated this the 6th day of December 2006

JUDGMENT

Writ petition is filed for a direction to respondents to implement Exts.P12 and P15 orders issued by the second and third respondent respectively to demolish a slab over the drainage canal connecting national high way on the one side and landed property on the other side. Petitioner's case is that petitioner is the owner of one side of the property and is entitled to get the slab over the drainage canal connecting petitioner's property to high way demolished.

2. Government Pleader produced photograph and a sketch showing slab over the drainage canal connecting the main land to the national high way. According to the Government Pleader, the slab is used by the public for going from the road to the private bus stand.

3. The counsel appearing for the additional respondents filed Ext.R6(B) order issued by the RDO under Section 133 of Cr.P.C. upholding public right of way over the slab. The counsel for additional respondents also relied on Ext.R6(d) judgment in

appeal issued by Additional District Court declaring right of way and granting permanent injunction against demolition of slab. The case of the additional respondent is that the petitioner suppressed material facts and filed this writ petition to get the slab over the drainage canal demolished with the assistance of PWD. It is seen from Exts.P8, P7 and P12 issued by PWD authorities that they were either not aware of the order of the Sub Divisional Magistrate or of the Civil Court declaring public right of way over the slab. Ext.R6(a) produced by additional respondent shows that there is a panchayat road connecting the high way through the very same slab. On the face of it, I am convinced that the PWD authorities have initiated action without verifying factual position and without knowing the order of Sub Divisional Magistrate, Panchayat records and the decree passed by Civil Court. Moreover, if the photograph and the sketch produced by the Government Pleader represent true picture of the area then the action proposed by the PWD authorities is absolutely illegal, arbitrary and against public interest, more so when there is no scheme for widening of the road. The orders

produced by petitioner only serves destruction of the slab over drainage canal which is under use by public as is evident from the documents produced by additional respondents.

4. In the circumstances, the orders of the PWD authorities sought to be enforced by the petitioner under direction of this court are unenforceable. It is for the petitioner to challenge order of the Sub Divisional Magistrate and the order of the Civil Court and get his exclusive right over the slab established and then approach PWD authorities.

5. Writ petition is disposed of declaring that the PWD authorities in this case have no right what so ever to remove the slab except with the approval of the Sub Divisional Magistrate and the Panchayat.

Writ petition is disposed of as above.

C.N.RAMACHANDRAN NAIR, JUDGE

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